

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 99-0035
SALES AND USE TAX
FOR TAX PERIODS: 1995-1997**

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Issues

Sales and Use Tax- Retail Sales of Cars

Authority: IC 6-2.5-2-1, IC 6-8.1-5-1, 45 IAC 2.2-3-5.

The taxpayer protests the assessment of tax on certain retail sales of cars.

Statement of Facts

The taxpayer is a used car dealer. In 1998, the Indiana Department of Revenue, hereinafter referred to as the department, performed an audit on the taxpayer. The audit resulted in an assessment of additional sales and use taxes. The taxpayer protested the assessment and requested a hearing. The taxpayer did not appear for the hearing, so the Letter of Findings is based upon the information in the file. Further facts will be provided as follows.

Sales and Use Tax-Retail Sales of Cars

Pursuant to IC 6-2.5-2-1, Indiana imposes a sales tax "on retail transactions made in Indiana." The purchaser pays the tax at the time of purchase to the retail merchant who collects the tax as agent for the state and remits the tax to the state. 45 IAC 2.2-3-5 clarifies the procedure for professional car dealers to collect and remit the sales tax. The dealers collect the sales tax at the time of sale and provide the purchaser with a completed form showing the tax was paid. The purchaser then uses this form at the Indiana Bureau of Motor Vehicles License Branch, hereinafter referred to as the bureau, to title the car and purchase license plates. The dealer remits the sales tax to the state.

The auditor compared the taxpayer's and bureau's records. The records did not always agree. In several instances, the bureau's records indicated that the taxpayer sold cars at retail and collected the tax when the taxpayer's records did not indicate the sales or collection of tax. The department assessed additional sales tax based upon the sales recorded by the bureau but not by the taxpayer.

The taxpayer protested the assessment of sales tax on three cars that it claims it did not sell to the people or at the time stated in the audit. The taxpayer also protested the assessment of sales tax on several transactions that allegedly were handled by another car dealer who used the taxpayer's name, number and paperwork.

IC 6-8.1-5-1 (a) provides for the assessment of additional sales and use taxes as follows:

If the department believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the unpaid tax on the basis of the best information available to the department.

In this case, the taxpayer's records were such that the department determined it was necessary to verify sales with the bureau. The bureau's records indicated that the taxpayer had collected sales tax on several sales of automobiles that were not listed in the taxpayer's records. The bureau's records provided the best information available to the auditor as to the actual amount of sales tax collected by the taxpayer and due to the state. It was appropriate for the department to use these records in the audit process and to prepare the audit assessment. A notice of proposed assessment based upon the audit report was sent to the taxpayer.

IC 6-8.1-5-1 (b) provides as follows:

. . .The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid, and the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

The taxpayer did not appear at the hearing or present additional documentation to demonstrate that the proposed assessment was incorrect. Therefore the taxpayer did not meet its burden of proof.

Finding

The taxpayer's protest is denied.